

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 98-0561****Gross Income Tax
For Tax Periods 1994-1996**

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ISSUES**I. Gross Income Tax—High Rate Receipts**

Authority: Gross Income Tax Department of Treasury et al. v. Harbison-Walker Refractories Co. 48 N.E.2d 834 (Ind. App. 1943); IC 6-2.1-2-1; 45 IAC 1-1-102

Taxpayer protests the classification of income at the high rate of gross income tax.

STATEMENT OF FACTS

Taxpayer is a diversified mineral resource company engaged in the manufacture and sale of refractories, minerals and insulating materials. The taxpayer also provides the service of relining steel industry ladles and degassers. The Department of Revenue ("Department") conducted an audit for the years 1994 and 1995. This audit included adjustments for Indiana labor income from the relining of ladles and degassers from the reported low rate to the high rate for gross income tax purposes. Taxpayer protests the adjustments for labor income from the lower rate to the higher rate.

I. Gross Income Tax—High Rate Receipts

Taxpayer protests the reclassification of receipts from labor cost from the low rate to the high rate. Taxpayer explains that the relining process involves: mixing refractory materials to specific densities, casting components for the vessels, installing reinforcements, and lining the vessels with refractories at certain temperatures. Also, some materials were installed under pressure, which required an additional heat application. Taxpayer's customers removed the equipment and reinstalled those items. Taxpayer contracted for the transportation of the empty vessels from the customer's

In support of its protest, taxpayer raises IC 6-2.1-2-1(c)(1), which states:

“Wholesale sales” means any sale described in this subsection in which the purchaser is not a division, subdivision, agency, instrumentality, unit, or department of government:

...

- (B) Sales of tangible personal property which is to be directly consumed in direct production by a purchaser in the business of producing tangible personal property by manufacturing, processing, refining, repairing, mining, agriculture, or horticulture.

Taxpayer also states that in the Harbison-Walker case, the court held that refractories consumed in direct production are taxed at the lower rate. Gross Income Tax Dept. of Treasury et al. v. Harbison-Walker Refractories Co. 48 N.E.2d 834, 837 (Ind. App. 1943). Taxpayer believes that since the refractory material is tangible personal property directly consumed in the production process it should be taxed at the lower rate.

The Department made an adjustment for Indiana labor income in this case. The refractory material remained taxed at the low rate. The Department relied on 45 IAC 1-1-102, which states in pertinent part:

When a taxpayer, acting as a “retail merchant” as defined above, supplies tangible personal property in connection with services performed on property belonging to another, the gross receipts from such services, regardless of when or where performed, are taxable at the higher rate. Gross receipts derived from any materials furnished under the contract are taxable at the lower rate.

The Department taxed the receipts from services performed on property belonging to another at the higher rate. The materials furnished were taxed at the lower rate.

Taxpayer protests the taxation of labor at the higher rate, but only provided information supporting the lower rate of tax for the refractory materials. The Department taxed the refractory materials at the lower rate. Taxpayer stated that it provided the services of mixing the materials, installing reinforcements, and lining the vessels. The Department properly adjusted the taxes on the labor at the higher rate, per 45 IAC 1-1-102.

FINDING

Taxpayer’s protest is denied.